

UNITED STATES BANKRUPTCY COURT  
FOR THE EASTERN DISTRICT OF PENNSYLVANIA  
BEFORE THE HONORABLE PATRICIA M. MAYER, JUDGE

In Re:	)	Case No. 23-11688-pmm
	)	Chapter 7
MARK LESLIE KENNEDY,	)	
	)	
Debtor.	)	
_____	)	
	)	
NANCY BERRIAN,	)	Adversary Proceeding
	)	No. 23-00067-pmm
Plaintiff,	)	
	)	<u>TRIAL</u>
v.	)	
	)	
MARK LESLIE KENNEDY,	)	
	)	
Defendant.	)	October 2, 2024
_____	)	Reading, Pennsylvania

Appearances:

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*Trial*

3

Wednesday, October 2, 2024

10:03 o'clock a.m.

P R O C E E D I N G S

THE CLERK: All rise. The United States Bankruptcy Court in the Eastern District of Pennsylvania is now in session, the Honorable Patricia Mayer presiding.

THE COURT: Good morning.

MR. LAPUTKA: Good morning, Your Honor.

MS. HOFFMAN: Good morning, Your Honor.

THE COURT: Just a minute.

Okay, why don't we – go ahead.

THE CLERK: I'll call matter number 1: Berrian versus Kennedy, regarding the trial.

THE COURT: All right. Why don't we get everyone's appearances. Ms. Hoffman.

MS. HOFFMAN: Good morning, Your Honor. Karen Hoffman for the Plaintiff Nancy Berrian.

THE COURT: Okay.

MR. LAPUTKA: Good morning, Your Honor. Charles Laputka for the Debtor/Defendant Mark Kennedy.

THE COURT: All right. So is there anything that we need to do before we start? Any motions that I need to know about?

MS. HOFFMAN: No, Your Honor.

THE COURT: Oh, good. Okay, I was hoping you'd say that. All right. Well, then, Ms. Hoffman, you can proceed.

*Opening Statement on behalf of the Plaintiff*

4

1 MS. HOFFMAN: Thank you, Your Honor. I haven't  
2 appeared in this Court before. Would you prefer I...

3 THE COURT: It's whatever you're comfortable with.  
4 Usually if you have exhibits, it's easier for you to be up  
5 there, but if you want to do it from the table, that's fine too.

6 MS. HOFFMAN: All right. Thank you.

7 OPENING STATEMENT ON BEHALF OF THE PLAINTIFF

8 MS. HOFFMAN: Your Honor, I represent Nancy Berrian,  
9 the Plaintiff in this action. Today we're going to show that  
10 the Defendant Mark Kennedy, the debt that he incurred to her is  
11 not dischargeable in bankruptcy because it was incurred by  
12 fraud. Mr. Kennedy, as a no-show, made repeated representations  
13 that he would complete the work at Ms. Berrian's house, that he  
14 agreed to in the contract. He made those representations with  
15 recklessness as to whether they were true or false. Made them  
16 repeatedly and repeatedly failed to follow through.

17 He didn't even bother to apply for permits. He didn't  
18 advise her that his business was dissolving. He intended to  
19 induce her to act. He took her money repeatedly and did not do  
20 the work. She justifiably relied on those representations.  
21 And, as we'll show, she incurred damages of at least \$44,000.  
22 Mr. Kennedy then refused to return the money he had paid – she  
23 had paid despite having completed the bare minimum of work.

24 So at the conclusion today, we will be seeking a  
25 declaration by the Court that this debt is nondischargeable

*Opening Statement on behalf of the Defendant*

5

1 under the Bankruptcy Code. Thank you.

2 THE COURT: Okay. Mr. Laputka.

3 OPENING STATEMENT ON BEHALF OF THE DEFENDANT

4 MR. LAPUTKA: Your Honor, I think we have several  
5 issues in the case before the Court this morning. I think the  
6 first issue that the Plaintiff has to overcome is that this is  
7 even a debt that is owed by Mr. Kennedy at all.

8 Ms. Berrian contracted with Mr. Kennedy's LLC and  
9 there is a very clear contract signed by Ms. Berrian. Plaintiff  
10 just made a comment about the fact that he didn't even bother to  
11 apply for permits. Well, the contract says that he wasn't going  
12 to and that that's her responsibility. So we have a writing.  
13 Anything outside of the four corners of this writing is  
14 irrelevant for today's matter.

15 Additionally, my client appeared, started to begin  
16 work, and then was given a very onerous demand of change orders  
17 from allegedly Ms. Berrian's neighbor coming to look at the  
18 project. My client said that he would agree to do these change  
19 orders if she would agree to pay for the change orders. She  
20 wanted everything done without any additional payments or  
21 amendments to the actual contract. At that point my client had  
22 — she was — at that point, my client was removed from the  
23 property. He was told not to return. He could not do any more  
24 work.

25 He was given a portion of the money for this job. He

*Opening Statement on behalf of the Defendant*

6

1 was not given the entire amount. He did have time, materials,  
2 labor for employees into this job at the time that his  
3 employment was terminated by the plaintiff. And he even sought  
4 counsel as to what he should do prior to interacting with her.

5 He then wrote her a letter giving her her options as  
6 she was terminating the contract and he complied with everything  
7 that he was entitled to comply to. As part of the corporation,  
8 there is no liability to my client individually. At most, there  
9 was a contract with the corporation which my client was ready,  
10 willing, and able to fulfill, but Ms. Berrian had a change of  
11 heart and wanted additional things done. And she unilaterally  
12 terminated the contract.

13 That's the evidence that we have we'll put before the  
14 Court this morning. And that's all for now. Thank you, Your  
15 Honor.

16 THE COURT: Okay. Ms. Hoffman, do you want to call  
17 your first witness?

18 MS. HOFFMAN: Yes, Your Honor. I would like to call  
19 Ms. Berrian.

20 Ms. Berrian, if you could. Thank you.

21 THE REPORTER: Please raise your right hand.

22 MS. BERRIAN: Okay.

23 THE REPORTER: Please raise your right hand.

24 NANCY BERRIAN, PLAINTIFF, SWORN/AFFIRMED

25 THE WITNESS: Yes.

*Berrian - Direct/Hoffman*

7

1 THE REPORTER: State your name and spell your whole  
2 name for the record.

3 THE WITNESS: It's Nancy Berrian. Do you want the  
4 first name and last name spelled?

5 THE REPORTER: Please.

6 THE WITNESS: N-a-n-c-y B-e-r-r-i-a-n.

7 THE COURT: Nancy.

8 THE WITNESS: Um-hum.

9 DIRECT EXAMINATION

10 BY MS. HOFFMAN:

11 Q. Good morning, Ms. Berrian.

12 A. Hi.

13 Q. You've already given your full name. Could you give us your  
14 address, please?

15 A. 506 Farmview Road, Easton, Pennsylvania 18040.

16 Q. And is Easton, is it also possibly another township that you  
17 were -

18 A. Forks Township, within Easton.

19 Q. All right. Thank you. And how long have you lived at that  
20 address?

21 A. I think it's three and a half years now.

22 Q. All right. How did you come to know the Defendant in this  
23 case?

24 A. He was referred to me by a friends of mine, Michael Miller  
25 and Drew McCarthy, because he was already working on their

*Berrian - Direct/Hoffman*

8

1 house.

2 Q. Okay. And did you know him as a — only as an individual or  
3 also as a company that he —

4 A. I knew him strictly with his contracting business, but I  
5 knew his wife through the former apartment building that I lived  
6 in with Mr. Miller and Mr. McCarthy.

7 Q. Okay. And what was the name of this business?

8 A. DSK Properties, I believe, LLC.

9 Q. Okay. And do you remember roughly when you first met with  
10 Mr. Kennedy?

11 A. It had to have been, I think, March of 2021, because I was  
12 going to be closing on my house at that time.

13 Q. Okay. And at that first meeting that you had with him, did  
14 he give you any indication on when he would be able to start  
15 working on your house?

16 A. No. As I said, he was already working on Michael and Drew's  
17 house, so I think that was going to be determined once we had a  
18 contract in place. But he did say at that time that he would  
19 try to start the work as soon as I closed on my house.

20 Q. Okay. And do you know when you signed a contract with DSK?

21 A. Oh, it was probably March 26th, I think.

22 Q. Of that year?

23 A. Of that year.

24 Q. Okay. Did the Defendant make any assurances as to when the  
25 interior work would be completed?

*Berrian - Direct/Hoffman*

9

1 A. I was supposed to move in in June, so he was supposed to  
2 start, you know, the work prior to my move in.

3 MS. HOFFMAN: Okay. So I'm just going to show you an  
4 exhibit, show you something. See if this works.

5 THE WITNESS: Okay.

6 MS. HOFFMAN: So this -

7 THE COURT: You turn - yeah.

8 MS. HOFFMAN: Okay. Thank you.

9 BY MS. HOFFMAN:

10 Q. Okay. So, Ms. Berrian, I'm going to show you this document  
11 that's previously been marked as P-1.

12 A. Um-hum.

13 Q. Do you recognize what's on here?

14 A. Yes.

15 Q. And please -

16 A. Sorry.

17 Q. Sorry. Can you describe it?

18 A. Yeah. So the first check for \$25,000, as it says March  
19 26th, that was when he had me sign the contract. I was the only  
20 one who signed it. And then he asked for the remainder of the  
21 deposit. And so that was presented on April 5th.

22 Q. Okay. There it is. And so you signed the contract on March  
23 26th, -

24 A. Um-hum.

25 Q. - you gave him the check for 25,000.

*Berrian - Direct/Hoffman*

10

1 A. Um-hum.

2 Q. When did he, if ever, when did he come to your home to – to  
3 do work?

4 A. He did not. Around the end of March, after I had closed for  
5 the house, I was speaking with Michael and – Miller. And we  
6 were discussing the fact that, you know, Mark had said he would  
7 start the day I closed or the day – I'm sorry – the day after I  
8 closed on my house. He hadn't. And so Michael said: I will  
9 speak to him on your behalf to see if I can get him to your  
10 house.

11 MR. LAPUTKA: I'm going to object, Your Honor. This  
12 is hearsay.

13 THE WITNESS: I do have a copy of the text. I don't  
14 know if that is admissible.

15 THE COURT: Ms. Hoffman, did you want to respond to  
16 the objection –

17 MR. LAPUTKA: No, no. I –

18 THE COURT: All right. I'll sustain the objection.  
19 Why don't you ask her a different question.

20 MS. HOFFMAN: Well, – okay.

21 BY MS. HOFFMAN:

22 Q. Okay. So just to clear that up, because there was an  
23 objection there, so you said that Mr. Kennedy had said he would  
24 begin working on your house the day after you signed – or, sorry  
25 – the day after you closed?

*Berrian - Direct/Hoffman*

11

1 A. Correct.

2 Q. All right.

3 A. Um-hum.

4 Q. Okay. And then so when did he actually come and start  
5 working on your house?

6 A. There was a day when he showed up, I don't know the exact  
7 date. It was end of March, beginning of April. And I believe I  
8 terminated our – or were trying to terminate the contract around  
9 April 15th or 16th. So there was a date at that time when he  
10 did appear at the house with one worker, I believe his name was  
11 Terrance, and they cleaned out my garage and tore down – I had a  
12 sun room that had paneling. And so they – Terrance was the only  
13 one who did the work. And he was there for just one day.

14 Q. Okay. I'm going to show you some more documents here. All  
15 right. All right, so this is the document previously marked as  
16 P-4. And, Ms. Berrian, do you recognize what's in this?

17 A. Yes.

18 Q. What is it?

19 A. This is on the interior of my home. That was the living  
20 room window.

21 Q. And did you take this picture?

22 A. I took the picture, correct. Yeah.

23 Q. And so this, relative to your previous testimony, does this  
24 accurately show what you just described happened on that day,  
25 that –

*Berrian - Direct/Hoffman*

12

1 A. No, no. This was prior to that. This was after I had  
2 closed, I did a walk-through, you know, in my house maybe, you  
3 know, a couple days later and had seen this - you know, I think  
4 it's called Ram Board up inside. Now can I elaborate on that,  
5 to say what - okay. I was surprised because the work that was  
6 to be done was my deck and my kitchen; this is in my living  
7 room.

8 Q. Okay. So let me just make sure I have the time line  
9 correct. So this was done prior to the day you described Mr.  
10 Kennedy and his worker -

11 A. Correct.

12 Q. - into your house? So do you have a - do you recollect when  
13 this was done?

14 A. It was probably, I would say, right after the closing,  
15 because, you know, I gave him the first check on March 26th, so  
16 I believe I probably gave him the key to my house at that point  
17 - oh, I couldn't have had the key. I'm sorry. So after I  
18 closed, I gave him a key to the house.

19 Q. Okay. And so who was it that put this up?

20 A. I don't know.

21 Q. This was done while you were out of the house?

22 A. Correct.

23 Q. Okay. And I'm going to show you another one here, also part  
24 of P-4. What does this show?

25 A. That shows the, I think, the skylight out of my front door

*Berrian - Direct/Hoffman*

13

1 also.

2 Q. Okay. And was this done in the same -

3 A. Yes, on the same day, I believe.

4 Q. And the same question for this document?

5 A. This is showing my dining room and the sliding glass door  
6 out to my deck.

7 Q. And so - and was this also a picture that you took?

8 A. Yeah, from the same day. Um-hum.

9 Q. And apart from what's depicted in those three pictures that  
10 I've shown you, was there any more interior work?

11 A. No, not at all.

12 Q. At -

13 A. No, hum-um.

14 Q. And I'm just going to show you now what's been marked as  
15 Exhibit P-5. What does this depict?

16 A. That is the sun room that is under the deck, and that was  
17 what eventually was taken apart.

18 Q. Okay. So in what you earlier testified, -

19 A. Um-hum.

20 Q. - around the end of March, -

21 A. Beginning of April, yes.

22 Q. - that Mr. Kennedy and his worker came, was that done on  
23 this date or is that - with what's shown in this picture, -

24 A. That -

25 Q. - was the result of that work?

*Berrian - Direct/Hoffman*

14

1 A. That is to show the before.

2 Q. That is the before.

3 A. That is the before.

4 Q. Okay.

5 A. Um-hum.

6 Q. So let me move on to -

7 A. And that's the after.

8 Q. Okay.

9 A. Part - part of the after. And that was to show the exposed  
10 electrical outlet that was in - you know, exposed to the  
11 elements.

12 Q. Okay. And this - I'm sorry to interrupt you.

13 A. Yeah. No, and also it's to show the Ram Board that was left  
14 behind, too.

15 Q. Okay. So all of that, what you just described, the  
16 difference in these two pictures of your, I guess, your sun  
17 room?

18 A. Yeah.

19 Q. Between here and here, that's what was done on the  
20 exterior -

21 A. Correct.

22 Q. - by the worker on that date that -

23 A. Correct, um-hum.

24 Q. And then you mentioned that the Ram Board was left behind?

25 A. Correct. That's also part of - to show the other exposed

*Berrian - Direct/Hoffman*

15

1 electrical outlet. And that was also that same day after the  
2 worker had torn down the sides.

3 Q. Okay. Thank you. All right. So at that point, after Mr.  
4 Kennedy and his worker had come and done the work that we've  
5 shown in the pictures, had you — to your knowledge, was — had  
6 any materials been ordered for your project?

7 A. I ordered my cabinets myself and that was through The Home  
8 Depot but that was it. Nothing else.

9 Q. Okay. So you weren't told by the Defendant that he or his  
10 company had ordered any other material —

11 A. No, no, we had already discussed that prior — like, that I  
12 was ordering the cabinets myself, and he was just going to be  
13 installing them.

14 Q. Okay. Now going back to this picture of the windows being  
15 covered, —

16 A. Um-hum.

17 Q. — which I think you said was done one day when you were out  
18 of the house, what was your understanding of why the windows had  
19 been covered in this way?

20 A. I don't — I really don't — I — I mean we had discussed  
21 permits, but I thought that Mr. Kennedy told me he was not going  
22 to be getting permits, like Mr. Laputka said it was in my  
23 contract. I don't remember that, but, yeah, I don't know why  
24 those windows were covered. As I said earlier, because  
25 especially this was the living room and the work that was

*Berrian - Direct/Hoffman*

16

1 supposed to be was the kitchen and the deck, which were in the  
2 back of the house.

3 Q. Okay. So what happened after that?

4 A. So after Terrance came to the house and took apart the sun  
5 room, I had a neighbor in the Silk Mill apartments who is a  
6 certified New Jersey and Pennsylvania inspector, I had had my  
7 home inspected for the sale of the house – you know, that you're  
8 supposed to – and this friend just casually mentioned to me –

9 MR. LAPUTKA: I'm going to object, Your Honor. This  
10 is hearsay without hearing them testify.

11 THE COURT: If you could refrain from saying what  
12 someone else told you, unless it's Mr. Kennedy.

13 THE WITNESS: Okay. I'm not sure then.

14 BY MS. HOFFMAN:

15 Q. Okay, let me rephrase the question.

16 A. Yeah. Thanks.

17 Q. So what was your next – next interaction with Mr. Kennedy  
18 after this?

19 A. Oh, okay. So after speaking with my friend, that it was – I  
20 was advised to –

21 MR. LAPUTKA: I'm going to object again, Your Honor.  
22 It's hearsay what she was advised by her friend.

23 THE WITNESS: Okay.

24 THE COURT: So you cannot testify to what someone else  
25 told you –

*Berrian - Direct/Hoffman*

17

1 THE WITNESS: Okay.

2 THE COURT: — unless it's Mr. Kennedy.

3 THE WITNESS: Okay.

4 THE COURT: So to the extent that your counsel is  
5 asking you what happened next, you can give me what actions you  
6 took, —

7 THE WITNESS: Okay.

8 THE COURT: — but you can't tell me some advice that  
9 you were given.

10 THE WITNESS: Okay.

11 THE COURT: Okay?

12 THE WITNESS: Okay. I approached Mr. Kennedy in  
13 regards to some safety issues around my home that hadn't come up  
14 during the regular home inspection. And so I had already had,  
15 you know, this contract that I signed that had the renovations.  
16 And so I asked him, I believe it was a telephone conversation, I  
17 was concerned for, in particular, I had an older — it was for  
18 the name of fuse box. And I would like that to be changed out.  
19 And I was concerned more about the electrical, there were some  
20 electrical issues, safety issues for, you know, general.

21 And so I said I'd like to add that or, you know, I  
22 think the, quote, change order, I'd like to add that to the  
23 contract we already had or the agreement we already had.

24 I do remember Mr. Kennedy objecting. And I said,  
25 well, I understand that this will be an additional expense, so

*Berrian - Direct/Hoffman*

18

1 if you could lay out what that expense will be and I will, you  
2 know, take a look at that it. And then that will, you know, be  
3 added onto what we already discussed.

4 BY MS. HOFFMAN:

5 Q. Okay. So you discussed the change order, but did you ever  
6 sign any amendments or additional work other than that what was  
7 agreed to in your contract?

8 A. No, I did not, nor did I offer any more money after that.

9 Q. Okay. Well, let me - let me ask you about that because when  
10 we showed - when I showed the check - well, let's bring it back  
11 up.

12 A. Um-hum.

13 Q. I just want to get the timing clear, so -

14 A. Sure.

15 Q. - it looks like for the first check, for 25,000, that was  
16 March 26th, -

17 A. Yes.

18 Q. - correct?

19 And you said somewhere around the end of March or  
20 beginning of April is when the worker came to your house and did  
21 the cleaning of the -

22 A. In my -

23 Q. - sun room and tore down -

24 A. Yeah. I'm sorry. And I would say maybe that is when - you  
25 know, maybe it was April 5th, maybe that was, you know, Mark

*Berrian - Direct/Hoffman*

19

1 came to the house with Terrance, so maybe that was when I  
2 presented him with that second check, and then Terrance did the  
3 demolition.

4 Q. Okay. At that time, as of April 5th, before you gave that  
5 second check, were you satisfied with the speed of the work that  
6 was being done?

7 A. No.

8 Q. And why not?

9 A. Because I was told it would be done, you know, - or started  
10 the day after my closing, and I was still in my apartment and  
11 was planning to move in once I left my apartment around June  
12 1st.

13 Q. Okay. So after this April - after you made the second  
14 payment on April 5th, which may or may not have been the day  
15 that they came back to your house -

16 A. Right.

17 Q. - or that they came to your house, did they ever return  
18 after that?

19 A. No.

20 Q. So no more work other than what was shown here?

21 A. Correct.

22 Q. So around April 15th, what, if anything, did you decide to  
23 do in regards to this project?

24 A. I decided to ask if I could terminate our agreement. I  
25 can't say I was advised. I - I felt that not only was the work

*Berrian - Direct/Hoffman*

20

1 not being done but that it would have been too costly to  
2 continue, if I were to go with Mr. Kennedy.

3 Q. Okay. And are you basing that, when you say it was too  
4 costly, are you basing that on the contract or the change order,  
5 or something else?

6 A. The change order that — that, you know, — after the change  
7 order, it was brought to my attention that this was extremely  
8 costly.

9 Q. All right. Let me just pull that up. So here's a document  
10 that was previously marked as P-3 on — I don't know if it's too  
11 small for you to read, but do you recognize what this is?

12 A. Yes.

13 Q. And what is this?

14 A. It's a notice from Caitlin, who is obviously his office  
15 manager. I spoke with her a few times in the process. And so  
16 that was her email with attached to the change orders.

17 Q. And then attached to that it says — is this the change order  
18 you mentioned —

19 A. Yes, yes.

20 Q. Okay. And —

21 A. I believe the total, if you go to the next page, yeah, came  
22 out to \$68,000 and change, and that was in addition to the  
23 80,000 that original — you know, so it would have been 80,- plus  
24 the 68,000.

25 Q. And, just to be clear what this change order covers, I mean

*Berrian - Direct/Hoffman*

21

1 I don't - I'm not going to ask you to go through and read the  
2 whole thing, but -

3 A. Right. These were more of the - as I said, safety issues  
4 that were brought to my attention that I, you know, felt were  
5 important. I was, you know, living in the home with my  
6 daughter. And, you know, I felt that it would be prudent to try  
7 to take care of these things.

8 Q. So then, as you testified, at that point, as of April 15th  
9 or so, you were unhappy with various things that you already  
10 mentioned, -

11 A. Um-hum.

12 Q. - and so what did you do, what actions did you take at that  
13 point?

14 A. I sent Mr. Kennedy an email asking him to terminate our  
15 contract or informing him that I would like to terminate our  
16 contract and that I also requested the remainder of my deposit  
17 and my key.

18 Q. Okay. So this is a document that was previously marked as  
19 P-6. And is - is this what you're describing?

20 A. Right, yeah. That is a - you know, it says there I offered  
21 to pay \$2500 for the removal of the sun room and the clean out  
22 of the garage, and - but I wanted the remainder of that money.

23 Q. Okay. And did you receive any response?

24 A. I received two responses. The first one that I believe it  
25 was, you know, was an email, the cover of the email stated that

*Berrian - Direct/Hoffman*

22

1 Mr. Kennedy was agreeing to return my money and I believe in  
2 full and said he would return the key. But attached to that  
3 email was a document where he said that his lawyer was advising  
4 him not to return my money and that he was entitled to at least  
5 I believe it was \$29,000 of the money and he — I don't remember  
6 what he said about the key in that.

7 Q. Okay. So this is — this was previously marked P-7. And  
8 then is that too small or can you see that?

9 A. I can see it — oh, it's a little blurry.

10 Q. Yeah, I don't — okay. So what — so what is this?

11 A. That's exactly what I'm saying. That is the cover of the  
12 email where he said, you know, if I do what you'd like to do, I  
13 can return your key and balance to you as early as tomorrow. So  
14 that gave me hope that I was going to get the remainder of my  
15 money and that he was agreeing to the \$2500 payment for the  
16 clean out of the sun room.

17 MS. HOFFMAN: Okay. And I believe that there was a  
18 proposed exhibit of Defendant — the Defendant had introduced.  
19 So I just want to pull that up.

20 Do you remember what it was marked as, the other  
21 conversation she mentioned?

22 MR. LAPUTKA: I believe it was — Exhibit Defendant's  
23 D.

24 BY MS. HOFFMAN:

25 Q. So I guess this document would be marked as Defendant's D, —

*Berrian - Direct/Hoffman*

23

1 A. Um-hum.

2 Q. - is this the attachment that you were -

3 A. Yes.

4 Q. - describing?

5 A. Um-hum. And I'd like to just point out he said: I wish we  
6 could have spoken before you made the decision to interview  
7 other contractors. I did not interview other contractors at  
8 that time.

9 Q. Okay. And speaking of that, though, you mentioned, you're  
10 pointing out he said that I wish we could have spoken, -

11 A. Um-hum.

12 Q. - I mean when you sent him your email saying I want to  
13 cancel this contract, -

14 A. Um-hum.

15 Q. - how many, I mean if you can estimate, how many times had  
16 you spoken with him or expressed your dissatisfaction before  
17 terminating the contract?

18 A. Maybe - I don't remember if it was - you know, it's  
19 obviously not in writing, so it may have been a phone call and  
20 probably meeting once or twice, I don't remember.

21 Q. Um-hum. But what was his response to those conversations  
22 when you said I'm not happy?

23 A. I - if I - if I - you know, I don't remember exactly, but  
24 if, you know, he did respond, he probably was saying that, you  
25 know, well, I will get you on the schedule, I will get you on

*Berrian - Direct/Hoffman*

24

1 the schedule.

2 Q. Okay.

3 A. But if I — can I elaborate again?

4 Q. Of course.

5 A. I do remember, though, that when I received those change  
6 orders, by the time I received the change orders, I was — and  
7 saw the additional 68,000 and change, I probably only took a day  
8 or two to decide that that — I wasn't going to go forward.

9 Q. All right. So apart from the lawsuit that we're here on  
10 today, as a result of this issue, did you take any other legal  
11 action, file any other lawsuit?

12 A. Not lawsuits. I did approach the Attorney General's office.  
13 Am I allowed to speak about that?

14 Q. You are, but I just want to clarify. So, —

15 A. Okay.

16 Q. — for instance, in the Court of Common Pleas, did you bring  
17 any lawsuit against him there in the North Hampton County Court?

18 A. I did file a police report, but, no, I don't know if I'm  
19 answering that correctly, right.

20 Q. I mean it's okay, it's okay. I know this was all a long  
21 time ago. Okay.

22 A. Yeah.

23 MS. HOFFMAN: So let me just pull something out here.  
24 Okay. So this was — and, I mean, this was submitted as a  
25 rebuttal exhibit, so I don't know what the Court would prefer to

*Berrian - Direct/Hoffman*

25

1 do in terms of introducing. I believe according to the Court  
2 procedure, it was to be share -

3 MR. LAPUTKA: Your Honor, I'm going to object. Any  
4 exhibit that I haven't yet seen -

5 THE COURT: That you haven't seen yet.

6 MR. LAPUTKA: - but I will certainly concede that a  
7 lawsuit was filed against my client in North Hampton County, if  
8 that's where this is going. I mean it's a matter of public  
9 record.

10 THE COURT: Is that -

11 MS. HOFFMAN: That's fine.

12 THE COURT: That will work?

13 MS. HOFFMAN: Yeah. That - that -

14 THE COURT: Okay.

15 MS. HOFFMAN: - obviates the need for a lot of -

16 THE COURT: Okay. Okay.

17 MS. HOFFMAN: Thank you.

18 MR. LAPUTKA: Sure.

19 MS. HOFFMAN: Okay.

20 BY MS. HOFFMAN:

21 Q. So - so, Ms. Berrian, and if I - would it refresh your  
22 memory if we, as the defense just stipulated, that there was a  
23 lawsuit filed by you in the North Hampton County Court of Common  
24 Pleas against Mr. - Mr. Kennedy and DSK?

25 A. There was an attempt, but I don't know if there was an

*Berrian - Direct/Hoffman*

26

1 actual — like this is the first time I've been in a courtroom  
2 for this, so I don't know if that's in reference to the magis- —  
3 going to the magistrate and then the district attorney. I had  
4 discussions with the district attorney over the phone and then  
5 through the police, but whether or not there were actually any  
6 papers filed, I'm not sure.

7 Q. Okay, that's fine.

8 A. I'm sorry, I'm not sure how I'm understanding.

9 Q. That's okay. So as — as it is a matter of public record, if  
10 I represented to you that at arbitration in that matter, you  
11 were awarded a default judgment in the amount of \$50,000 against  
12 DSK; does that refresh your memory?

13 A. Oh, when you and I — oh, I'm sorry. I thought that was part  
14 of this. So, yes, I do remember that. Okay, I know where  
15 you're going.

16 Q. No. I understand why you would think it was the same  
17 matter.

18 A. Okay.

19 Q. But — okay.

20 A. Yeah.

21 Q. And is it your understanding — what is your understanding  
22 about the claims against Mark Kennedy personally in that  
23 lawsuit? Are those being allowed to proceed?

24 A. The ones that I made personally, no, nothing is being  
25 allowed to proceed.

*Berrian - Direct/Hoffman*

27

1 Q. Okay. And have you received any money in compliance with  
2 that judgment against DSK?

3 A. No.

4 Q. Okay. Did Mr. Kennedy ever inform you that DSK was in the  
5 process of closing down or dissolving?

6 A. So prior to his deposition, no, I did not know that.

7 MS. HOFFMAN: All right. And I do just one more  
8 thing, want to bring up a copy of your contract.

9 (Counsel confer.)

10 MR. LAPUTKA: And let me just give you one minute in  
11 the draw order.

12 MS. HOFFMAN: Sure. Is that a claim?

13 THE COURT: Are they in Exhibit A?

14 MS. HOFFMAN: Yes. I apologize.

15 BY MS. HOFFMAN:

16 Q. So, Ms. Berrian, I'm going to show you the last exhibit  
17 that's been previously marked as Defendant's Exhibit A. Do you  
18 recognize what is this?

19 A. Um-hum.

20 Q. And what is it?

21 A. That is the original contract or renovation agreement,  
22 um-hum.

23 Q. And if I turn to the second page, so you see here on the  
24 first page under kitchen, -

25 A. Um-hum.

*Berrian - Direct/Hoffman*

28

1 Q. - I'm just pointing out where can you read this part that's  
2 in parentheses?

3 A. Excludes architectural drawings or engineering permit and  
4 inspection costs.

5 Q. Okay. And I'm just going to go through and point out is it  
6 - is it repeated -

7 A. Yes.

8 Q. - at various points -

9 A. Yes.

10 Q. - throughout? Okay.

11 And I'm just looking quickly, but you could also look.

12 Other than those parentheticals, I'm not seeing anywhere else  
13 that permits are mentioned; is that - that -

14 A. That is correct, -

15 Q. - correct?

16 A. - yes.

17 Q. Just hang on one second. Okay. And then here on the last  
18 page, obviously is that - is that your signature?

19 A. That is my signature. And, yes, I see I am the only person  
20 who signed it, yes.

21 MS. HOFFMAN: All right. Those are all the questions  
22 I have for Ms. Berrian.

23 THE COURT: Okay, Mr. Laputka, cross?

24 MR. LAPUTKA: Just one second, please, Your Honor.

25 MS. HOFFMAN: Thank you.

*Berrian - Cross/Laputka*

29

1 (Counsel confer.)

2 CROSS-EXAMINATION

3 BY MR. LAPUTKA:

4 Q. Good morning, Ms. Berrian. I heard you state before that  
5 you were referred to DSK –

6 A. Um-hum.

7 Q. – Property Services, LLC by some friend; is that correct?

8 A. Correct.

9 Q. Why did your friends refer you to DSK Property Services,  
10 LLC?

11 A. Why did they?

12 Q. Yes.

13 A. Well, Michael Miller was my real estate agent. We were both  
14 first in our homes at the same time. He and his husband were  
15 renovating their home as well. And they knew that I wanted to  
16 do some renovations. They had already interviewed a few  
17 contractors prior to me. They had also moved into their home  
18 prior to me. And they suggested I speak with him. He was  
19 referred to them by Mr. Kennedy's wife Jennifer, who was our – I  
20 don't remember her ti- – property manager, I believe, or office  
21 manager at the apartment building where we had both lived and  
22 where we – where we had lived and where we met.

23 Q. And did those folks have their project completed by DSK  
24 before you hired DSK?

25 A. No. They were in the process. He was working on their

*Berrian - Cross/Laputka*

30

1 house first.

2 Q. How long would you say he had worked on their house before  
3 they referred DSK to you?

4 A. Maybe a couple of weeks, about a week. I do remember a text  
5 between Michael and I, where he — they were doing the demo work.  
6 That was at the end of March.

7 Q. So towards the end of March, around the same time that you  
8 reached out to DSK, you received a text from Michael that DSK  
9 had been doing the demo work?

10 A. Or that they were starting — yes, that —

11 Q. Was it ever mentioned to you that Mark Kennedy was  
12 physically doing the demo work at their house?

13 A. He or his staff and — yeah, I'm not sure, you know.

14 Q. And did they ever represent any displeasure with the DSK  
15 Property Services, LLC work that was being done at their house?

16 A. After some months, yes.

17 Q. After how many months?

18 A. I would say after I terminated my contract with Mr. Kennedy,  
19 yes.

20 Q. Okay. So they were pleased with Mr. Kennedy at the time —  
21 well, let's back out of it a second.

22 A. Yeah.

23 Q. They didn't — Mr. Kennedy didn't work for them; they had DSK  
24 Property Services, LLC, correct?

25 A. Okay. Yes.

*Berrian - Cross/Laputka*

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1 Q. And they were pre- -- they were pleased with the work that  
2 DSK Property Services, LLC was doing at the time they referred  
3 this company to you?

4 A. They were pleased with the demolition as it was going for  
5 them.

6 Q. Okay. And they didn't represent to you any displeasure with  
7 any of the DSK work until after you had terminated your contract  
8 with Mr. Kennedy?

9 A. I think that's correct, the time line.

10 Q. Okay. Now you said that closing -- actually I don't know if  
11 you said. What was the date of closing on your house?

12 A. I believe it was March 22nd.

13 Q. Okay.

14 A. 21st or 22nd.

15 Q. And you were shown a check earlier for -- dated March 26th  
16 for \$26,000, the \$25,000 on the --

17 A. Twenty-five thousand dollars --

18 Q. -- 26th --

19 A. March 26, correct.

20 Q. If you would just bear with me, please, and --

21 A. Sure.

22 Q. -- be a little patient when I ask questions so you don't talk  
23 over with me, because everything is being transcribed and if we  
24 talk over each other, it's --

25 A. They won't hear --

*Berrian - Cross/Laputka*

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1 Q. - messy and harder to read for Court staff. Thank you.

2 A. Got it. I will try.

3 Q. So closing was on March 26th of 2021. And was that the same  
4 day that you signed a contract with DSK Property Services, LLC?

5 A. I believe that's what it says on the contract.

6 THE COURT: I thought that your testimony was the  
7 closing was the 22nd; -

8 THE WITNESS: Yeah.

9 THE COURT: - is that incorrect?

10 THE WITNESS: No. Closing, I believe, I -

11 THE COURT: Okay.

12 THE WITNESS: - it was 22nd, and only I signed the  
13 contract -

14 THE COURT: Because I just wanted to make sure I  
15 wasn't missing the wrong date -

16 THE WITNESS: Yeah.

17 THE COURT: - because the 22nd is when the closing -

18 MR. LAPUTKA: Me too, Your Honor. I wasn't trying to  
19 trip anyone up.

20 THE COURT: No, no, right.

21 THE WITNESS: I think it was, -

22 THE COURT: Okay.

23 THE WITNESS: - and then, yes, when we signed the  
24 contract like two, three days later.

25 THE COURT: Got it, okay.

*Berrian - Cross/Laputka*

33

1 THE WITNESS: Yeah.

2 BY MR. LAPUTKA:

3 Q. And is this a copy of the contract that you signed –

4 THE WITNESS: I'm sorry. I just remembered that that  
5 would have explained why I gave him a key at that time.

6 THE COURT: Okay.

7 THE WITNESS: Sorry.

8 BY MR. LAPUTKA:

9 Q. Is this a copy of the contract that you signed?

10 A. Yes, I believe. If I'm the only person that signed it, yes,  
11 that is the – the copy.

12 MR. LAPUTKA: Your Honor, if I may, I will put it on  
13 the screen, but may I also hand her a copy? I think it would be  
14 easier instead of just showing like this much at a time?

15 THE COURT: Yeah, that's fine.

16 MR. LAPUTKA: Okay.

17 THE COURT: That's fine.

18 MR. LAPUTKA: Thank you.

19 BY MR. LAPUTKA:

20 Q. It's just hard showing you one paragraph at a time. I want  
21 to make sure that you take a look at that, –

22 A. Yeah.

23 Q. – please, and let me know that that is, in fact, the  
24 contract you signed and that that is your signature and date on  
25 page 3, March 26, 2021?

*Berrian - Cross/Laputka*

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1 A. Correct.

2 Q. Now you see that paragraph above there, the March 26, 2021?

3 A. The right of rescission, correct.

4 Q. Yes. What do you know about the right of rescission?

5 A. What it states there.

6 Q. Did you — did you read this contract before you signed it?

7 A. I did.

8 Q. So you knew you had three days to change your mind, right?

9 A. That's probably after — after I decided, I probably went  
10 back to the contract. To be honest, I don't know if I...

11 Q. Okay. So when —

12 A. ...remember it, we'll say.

13 Q. Who was the first person that you met with at DSK Property  
14 Services, LLC?

15 A. Mark Kennedy.

16 Q. And where did you meet with him?

17 A. On my lawn outside my home.

18 Q. Did he have a shirt on that said DSK Property Services, LLC?

19 A. I don't remember.

20 Q. Did he have a company truck?

21 A. No, I don't believe so.

22 Q. No sticker —

23 A. I think he — I'm sorry. Might — a pickup truck, but I don't  
24 know if it had lettering on it.

25 Q. Okay.

*Berrian - Cross/Laputka*

35

1 A. Yeah.

2 Q. And when you met with him on your lawn, what did you discuss  
3 before you came to the terms of this contract?

4 A. We had discussed, you know, what I was looking forward to do  
5 and that I was hoping, you know, we could have these renovations  
6 taken care of.

7 Q. And let's take a look at what you were looking to do here.  
8 So there's -

9 A. Um-hum.

10 Q. - a couple of different things.

11 A. Um-hum.

12 Q. The first one we have here is foyer entryway.

13 A. Um-hum.

14 Q. There was a closet that you wanted removed and there was a  
15 pony wall and a new closet installed. Can you tell us a little  
16 bit about that, what you were requesting there?

17 A. As you walk into my home, there is a small closet and to the  
18 left of it is a small pony wall. And I was - my - in my  
19 daughter's bedroom, there is a very small clothing closet for  
20 her. And we discussed the possibility of incorporating that  
21 front hall closet into her closet to make it bigger, to make it  
22 larger.

23 Q. So that picture you showed us earlier of the side light with  
24 the Ram Board over it, -

25 A. Um-hum.

*Berrian - Cross/Laputka*

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1 Q. - is that the foyer?

2 A. That's - yeah. That's - so that is when you're coming  
3 through the door, the closet, that would be behind it, -

4 Q. Okay.

5 A. - facing out to the - to the room.

6 Q. How about that big window that was covered in Ram Board, is  
7 that kind of right by the pony wall on the front door there?

8 A. Not really, no.

9 Q. How far away would you say it is?

10 A. That's a couple of feet, I would say at least three feet  
11 away.

12 Q. Okay. And there -

13 A. Sorry. That is the - that is the bay window that was down  
14 onto the Street.

15 Q. Next to your front door?

16 A. Yes, somewhat next to that, -

17 Q. Okay.

18 A. Um-hum.

19 Q. And was there demo work done or scheduled to be done  
20 pursuant to this contract to that area in the foyer?

21 A. No.

22 Q. Well, how would he remove a closet next to the front door  
23 and make a match pony wall, install a new closet, a new foyer in  
24 the front door without doing work in the foyer?

25 MS. HOFFMAN: Objection.

*Berrian - Cross/Laputka*

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1 THE WITNESS: Yeah. I'm not sure because it wasn't -

2 THE COURT: What exactly is the objection?

3 MS. HOFFMAN: Speculation.

4 THE COURT: Okay. Mr. Laputka, do you want to just  
5 ask it a different way, perhaps?

6 MR. LAPUTKA: Sure.

7 BY MR. LAPUTKA:

8 Q. The confusing part to me, Ms. Berrian, is that you told the  
9 Court that you had no idea why there was Ram Board put over the  
10 windows, -

11 A. Um-hum.

12 Q. - but the contract says there was construction that was  
13 supposed to occur right there; is that correct?

14 A. Yeah. It was wood for the - that - the window on the door,  
15 the skylight on the door, correct. But there wasn't going to be  
16 any construction on that larger window. And that would not have  
17 been - it wasn't close enough to have been impacted, -

18 Q. Okay.

19 A. - yeah.

20 Q. So in your opinion tearing down that wall between the foyer  
21 and the window couldn't possibly have broken one of those  
22 windows -

23 A. No.

24 Q. - in the front? Okay, fair enough.

25 But there was Ram Board placed on those, presumably to

*Berrian - Cross/Laputka*

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1 protect them?

2 A. Presumably.

3 Q. Now we go to the kitchen.

4 A. Yes.

5 Q. In the kitchen, there was demo that needed to be done; is  
6 that correct?

7 A. Demo needed to be done, correct.

8 Q. What demo needed to be done in the kitchen besides take down  
9 the cabinets?

10 A. There was a ceiling, like a false ceiling, that that needed  
11 to be — it was dropped, so that was going to be removed and the  
12 countertops were going to be taken out. You know, that type of  
13 thing.

14 Q. Okay. And was there any demolition done in the kitchen at  
15 all?

16 A. No.

17 Q. There wasn't an island that was removed?

18 A. No.

19 Q. There was no work done in the kitchen?

20 A. No, not at all.

21 Q. Okay.

22 A. Not — not by Mr. Kennedy.

23 Q. And this is — this is a \$26,600 kitchen remodel that does  
24 not include cabinets, right?

25 A. Correct.

*Berrian - Cross/Laputka*

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1 Q. Or countertops,?

2 A. Correct.

3 Q. Okay.

4 A. I paid for those myself.

5 Q. Gotcha. And you see down here where it says: Excludes  
6 drawings, engineering, permit, and inspection. Right?

7 A. Correct.

8 Q. So you knew that there was not going to be a permit pulled  
9 by the contractor, that was your requirement?

10 MS. HOFFMAN: Objection.

11 THE WITNESS: Yeah.

12 THE COURT: I'm going to sustain that objection. I'm  
13 not sure that that is the conclusion we can -

14 MR. LAPUTKA: Okay.

15 THE COURT: - draw, so why don't you trying asking  
16 differently.

17 BY MR. LAPUTKA:

18 Q. Why would you think that DSK Property Services, LLC was  
19 going to get permits for this job if it specifically states in  
20 the contract that there's - excludes the permit?

21 MS. HOFFMAN: Objection.

22 THE WITNESS: There was... I'm willing to answer  
23 that.

24 THE COURT: I - I understand that you're willing to  
25 answer that.

*Berrian - Cross/Laputka*

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1           What I'm going to say is why don't you ask her what  
2 she understands that phrase to mean. I think that's the only  
3 way that the only way that we could past this.

4 BY MR. LAPUTKA:

5 Q. Okay. Ms. Berrian, what do you understand this phrase here  
6 to mean that is separated from the paragraph above in  
7 parentheses?

8 A. I believe it's - I understand it to mean that we were not  
9 going to apply for permits because that was what I was told by  
10 Mr. Kennedy.

11 Q. Okay.

12 A. In a telephone conversation or when - maybe when we first  
13 met, but I know it was - that was conveyed to me.

14 Q. Now you said that we were not going to apply. Do you mean  
15 that -

16 A. Well, sorry.

17 Q. Do you mean that you were not going to apply or he was not  
18 going to apply?

19 A. That I - going back to 2021, if I recall correctly, I  
20 believe he said we do not need permits for this.

21 Q. Next we're doing a deck renovation and extension for about  
22 \$12,000; is that correct?

23 A. Um-hum.

24 Q. Was anything done on the deck?

25 A. No.

*Berrian - Cross/Laputka*

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1 Q. The tread boards of the deck were not removed by –

2 A. No.

3 Q. – Mr. Kennedy or DSK?

4 A. No.

5 Q. Next we have HVAC, a \$23,000 upgrade, correct?

6 A. Correct.

7 Q. And then the basement garage for 12,700, –

8 A. Correct.

9 Q. – you did testify that there was a bunch of garbage that was  
10 in the garage that was cleaned out by DSK?

11 A. Yes. It says the – well, it's not on this list, but there  
12 was, for example, pegboard that was removed. As far as I  
13 remember, the glass was not removed, and my daughter ended up  
14 removing it herself.

15 Q. Is there anywhere on this list where it says that DSK was to  
16 remove the garbage from your garage?

17 A. Well, if it's – I recall that firewall can be removed, in  
18 place – no, I don't think that – yeah. And if it was considered  
19 garbage, then I thought it was being prepped for this work. So  
20 that's how I understood it.

21 Q. Okay. Then I see here basement, a demo room under deck; is  
22 that the room that you showed us pictures of earlier?

23 A. Yes. Yes.

24 Q. So that was, you know, like an enclosure under your deck  
25 that was –

*Berrian - Cross/Laputka*

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1 A. Correct.

2 Q. - completely removed by DSK; is that correct?

3 A. Not completely, but, yes, it was removed.

4 Q. Okay. The pictures to me look like there were no walls or  
5 anything left; what was still there?

6 A. The two electrical boxes that were exposed to the elements.

7 Q. Okay.

8 A. Yeah.

9 Q. On the first day of work, -

10 A. Correct.

11 Q. - when they stopped at the end of the day.

12 A. Right.

13 Q. Okay.

14 A. Yeah.

15 Q. But all the walls were removed?

16 A. Yes, I believe.

17 Q. Okay. Now you started out your testimony this morning by  
18 saying that DSK employees only showed up one day?

19 A. Correct.

20 Q. But then earlier than - you know, then you later said there  
21 was work done on the house before you were there, -

22 A. Meaning -

23 Q. - like the Ram Board was put up before you -

24 A. Correct. Correct.

25 Q. - there was prep work done that was done when you were not

*Berrian - Cross/Laputka*

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1 there?

2 A. Correct.

3 Q. How often we're you not at this house?

4 A. After I closed, I was probably there a few times, a few  
5 times.

6 Q. Was it every day?

7 A. No.

8 Q. Was it two days a week?

9 A. No. No.

10 Q. Is it possible that DSK and their employees were there doing  
11 things on other days that you just didn't realize?

12 MS. HOFFMAN: Objection.

13 THE COURT: What's the objection?

14 MS. HOFFMAN: Speculation.

15 THE COURT: I'm going to allow that question.

16 Go ahead, you can answer that.

17 THE WITNESS: Okay. Is it possible? Can I say I  
18 highly doubt it, meaning because I was either there, you know,  
19 or had — yes, I will just say how we got at this, —

20 BY MR. LAPUTKA:

21 Q. How would you know —

22 A. — I don't know.

23 Q. — if they came out and did the review of the HVAC, inspect  
24 the size of the system if you weren't home?

25 A. Because I knew that they were busy on my friend's house and

*Berrian - Cross/Laputka*

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1 they were working there. So I would say I was more in touch  
2 with my na- — friends and what was going on at their house than,  
3 you know, —

4 Q. So you knew that there was a project going on at your  
5 friend's house.

6 A. Yes.

7 Q. But you expected them to drop that project and come do yours  
8 right away?

9 A. Not at all, —

10 MS. HOFFMAN: Objection.

11 THE WITNESS: Not at all. I never stated at that.

12 BY MR. LAPUTKA:

13 Q. Let's take a look down here at the terms of this project.  
14 What's the start date of this project?

15 A. Commencing spring of 2021.

16 Q. And when did it start?

17 A. In the spring.

18 Q. Okay. And when does it say it would be completed?

19 A. By fall.

20 Q. Well, if it was going to be completed by the fall of 2021,  
21 why do you think it was reasonable for you to expect to move in  
22 in June?

23 A. That is a good question and I'd like to say that I think  
24 that if that was unreasonable of me to expect that, then I  
25 should have been informed that it was unreasonable of me to

*Berrian - Cross/Laputka*

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1 expect that, but I was not. I was never given the opportunity  
2 to discuss that further with Mr. Kennedy.

3 Q. But you were given a contract that you signed that said fall  
4 of '21?

5 A. Right.

6 Q. Okay. Now —

7 A. And it was a contract that only I signed, correct.

8 Q. Okay. I don't know what the relevance of that is. Would  
9 you like to expand upon that?

10 A. Well, I understand that under the HIPAK (phonetic) that, you  
11 know, both — both parties have to sign a contract in order for  
12 it to be valid.

13 Q. Oh, okay. I respect that that's your understanding and I  
14 will respectfully disagree with it.

15 Now you had an inspection done prior to purchasing  
16 this house by Allied Inspection; is that correct?

17 A. I believe so, yes.

18 Q. And did that inspection reveal all of these other issues  
19 that you say were safety concerns?

20 A. You mean according to the change orders?

21 Q. I'm — yes, according to the change orders.

22 A. Okay. Where they revealed by Allied, no, they were not  
23 revealed by Allied.

24 Q. Okay. So you do agree that your change orders were very  
25 extensive, correct?

*Berrian - Cross/Laputka*

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1 A. Yes. Extensive, yes. Thank you.

2 Q. And the email, in fact, that you sent to my client on April  
3 16th was after he had begun working on the homes; is that  
4 correct?

5 A. If that's - yes. Yes. That seems realistic, timely.

6 Q. And this is about 20 or 21 days from the date that you  
7 signed the contract and my client began the work; is that  
8 correct?

9 A. Um-hum.

10 Q. So 21 days into a project, after careful consideration, you  
11 decided to go in a different direction and will no longer need  
12 his services?

13 A. Um-hum.

14 Q. My question to you is: What made you think that you had  
15 that right under the contract?

16 A. I'm a consumer and I just felt like, you know, if someone's  
17 not fulfilling their obligation, that you have a right to  
18 proceed and that's -

19 Q. Well, let me ask you, -

20 A. Um-hum.

21 Q. - what obligation was not fulfilled?

22 A. Any of these - you know, nothing that was stated in the  
23 contract.

24 Q. Well, but the contract -

25 A. Other than that -

*Berrian - Cross/Laputka*

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1 Q. - stated that that stuff was going to be done by the fall of  
2 2021. And, in fact, you did state a few things were done within  
3 the first 20 days.

4 A. The con- - it was supposed to be completed by the fall of  
5 2021, correct. But the only thing that I see on this contract  
6 that was done with the demo room under the deck - the demolition  
7 of the room under the deck.

8 Q. Why would you think that you had the right to terminate the  
9 contract for going in a different direction? Because your email  
10 doesn't say that you're terminating a contract for - let me -  
11 let me scratch that question and start over.

12 Your email does not state that you were terminating  
13 the contract due to any failure of my client. It states that  
14 you were terminating the contract because you were going in a  
15 different direction. Is that correct?

16 A. Yeah.

17 Q. What makes you think that you have the right to terminate a  
18 contract to go in a different direction on a whim and get all  
19 your money back?

20 A. Because I am a consumer and I was given advice to -

21 Q. All right.

22 A. - to approach it that way. Am I allowed to say that?

23 Q. Now let me ask you. You had filed an adversary action in  
24 this bankruptcy against my client alleging fraud.

25 A. Um-hum.

*Berrian - Cross/Laputka*

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1 Q. Do you know what fraud is?

2 A. I do.

3 Q. What part of anything that DSK Properties did to you was  
4 fraudulent?

5 A. I believe that what can be considered fraud is the fact that  
6 other than coming to my house for, you know, one day in that  
7 timeframe and removing, you know, the room, there was no other  
8 real work done, I guess. And, you know, when Mark said that he  
9 would give me back my money, I believed that that was going to  
10 happen as well.

11 Q. Well, did Mark say he would give you back all of your money  
12 or did he say he would give you back the balance?

13 A. I'd have to go back to that email that he wrote.

14 Q. Let's go back to it.

15 A. No, before that. The other piece.

16 MR. LAPUTKA: This blue one? One of your exhibits.

17 Do you have the one she's referring to? She said it  
18 was the shorter email.

19 BY MR. LAPUTKA:

20 Q. Is this the email you're referring to?

21 A. Yes.

22 Q. And this says from you: Please see the attached and – oh,  
23 this is –

24 A. No.

25 Q. – please see the attached and advise me on what you do. I

*Berrian - Cross/Laputka*

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1 can return the key and the balance to you as early as tomorrow;  
2 is -

3 A. Correct.

4 Q. - that correct?

5 A. Correct.

6 Q. Is this what was attached?

7 A. Yes.

8 Q. Okay. Now this says all of the details, right?

9 A. Yes.

10 Q. And right down here, it says what he's proposing to give you  
11 back as the balance due was 1500 bucks, correct?

12 A. As of - yes, he's saying that's what the difference is.

13 Q. With a full explanation of your breach of contract and why  
14 he's keeping all of the money that you had paid him so far; -

15 A. Um-hum.

16 Q. - is that correct?

17 A. Yes.

18 Q. Okay. And then he offered you other solutions -

19 A. Um-hum.

20 Q. - by saying: Hey, these are things that we can still do for  
21 this money, if you like, -

22 A. Um-hum.

23 Q. - right? I can still complete the deck renovation and  
24 extension, I can still do these things in your garage if you  
25 want, and I can still do these things on the exterior?

*Berrian - Cross/Laputka*

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1 A. Um-hum.

2 Q. And all you had to do was respond to this and say what you  
3 wanted; is that correct?

4 A. I believe.

5 Q. Did you respond to it?

6 A. No, I did not.

7 Q. What did you -

8 A. I was told -

9 Q. - do instead?

10 A. I was told to contract the attorney general.

11 Q. Okay. And did the attorney general make a claim against DSK  
12 Contracting on your behalf?

13 A. I don't know if he made a claim. I was - I, you know, went  
14 on their website and I wrote out my side of the story,  
15 complaint, however you want to put it. And then they sent to  
16 me, they got back to me and said we will - we received it and we  
17 will let you know what the next steps are.

18 Do you want me to continue?

19 Q. Sure.

20 A. And then I received a copy of Mr. Kennedy's rebuttal to  
21 that.

22 Q. And then what happened with respect to the Attorney General  
23 complaint that you filed?

24 A. The Attorney General said that we could mediate but that  
25 they did not think there was enough evidence to go forward, I

*Berrian - Cross/Laputka*

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1 believe, if that's correct, if I'm using the right terminology.

2 Q. And what was your — did they give you any other explanation  
3 or understanding of what they would need to go forward?

4 A. No.

5 Q. Okay.

6 A. But I believe the attorney — whoever I spoke with in the  
7 Attorney General's office said I should seek a lawyer.

8 Q. Okay.

9 A. A lawyer.

10 Q. Now so far this morning, as far as you and I are concerned,  
11 we've been talking about DSK Property Services, LLC; is that  
12 correct?

13 A. Correct.

14 Q. And your contract is with DSK Property Services, LLC?

15 A. Correct.

16 Q. It's got the home improvement contractor number on there,  
17 the address, the phone number, all the information required by  
18 the Home Improvement Contractor Act, correct?

19 A. Correct.

20 Q. The correspondence that you received from Mr. Kennedy's  
21 email was labeled DSK Property, LLC; is that correct?

22 A. Correct.

23 Q. And this letter from his office on letterhead, DSK Property  
24 Services, LLC, correct?

25 A. Correct. Surprisingly that wasn't on the contract, though.

*Berrian - Cross/Laputka*

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1 Q. Well, it is right here.

2 A. Oh, I'm sorry. Because it's stated, not that — I'm sorry —  
3 looking at the letterhead.

4 Q. Okay. And, in fact, even his Home Improvement Contractor  
5 license is even on his letterhead, right?

6 A. Yes.

7 Q. So there is no doubt in your mind that you were dealing with  
8 the company DSK Properties, LLC; is that correct?

9 A. Correct.

10 Q. Well, why do you think Mr. Kennedy owes you this money  
11 personally?

12 A. Because the way I understand it, he closed his business and,  
13 you know, when the person's business is closed, I don't know  
14 what the route is to get your re- — you know, retribution,  
15 remuneration, or refund. I am — I've never done this before, so  
16 I'm going by the advice of, you know, others, because I never  
17 wanted to be in this spot, to begin with.

18 Q. I understand.

19 A. Um-hum.

20 Q. But you had no contract with Mr. Kennedy personally?

21 A. No contract with Mr. Kennedy pers- —

22 Q. No dealings with him personally?

23 A. When you say no dealings, I didn't deal with him. You know,  
24 he came to my house. He dropped off Terrance the day of, you  
25 know, the clean up and —

*Berrian - Redirect/Hoffman*

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1 Q. On behalf of the company, though.

2 A. Oh, okay.

3 Q. He didn't come over to hang out and have coffee?

4 A. Correct.

5 Q. Okay. Never went out to dinner with him?

6 A. No.

7 Q. Never —

8 A. Or his wife, no.

9 MR. LAPUTKA: Okay. No further questions, Your Honor.

10 THE COURT: Redirect?

11 MS. HOFFMAN: Briefly.

12 MR. CASEY: Um-hum.

13 REDIRECT EXAMINATION

14 BY MS. HOFFMAN:

15 Q. Ms. Berrian, I'm just going to draw your attention again to  
16 this second page of the contract, which I think you might still  
17 have in front of you, right? So here in the last paragraph  
18 where it says work will commence in 2021, and should be  
19 completed by fall of 2021. What is the part that's underlined  
20 say, if anything?

21 A. If all work is released in a timely manner.

22 MS. HOFFMAN: Okay. That was the only question I  
23 have.

24 THE WITNESS: Thank you.

25 MR. LAPUTKA: No recross, Your Honor.

*Kennedy - Direct/Hoffman*

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1 THE COURT: Okay. All right. I presume that everyone  
2 is done with their -

3 MS. HOFFMAN: With Ms. Berrian.

4 THE COURT: Okay. You can step down.

5 THE WITNESS: Thank you.

6 (Witness excused.)

7 THE COURT: All right. Ms. Hoffman, do you have any  
8 other witnesses?

9 MS. HOFFMAN: I do. I would like to call Mr. Kennedy.

10 THE COURT: Okay. Mr. Kennedy, come on up.

11 (Comments off the record.)

12 MARK LESLIE KENNEDY, DEFENDANT, SWORN/AFFIRMED

13 THE WITNESS: Yes.

14 THE REPORTER: State your name and spell your whole  
15 name for the record.

16 THE WITNESS: Mark Kennedy. M-a-r-k L-e-s-l-i-e  
17 K-e-n-n-e-d-y.

18 THE COURT: Thank you.

19 DIRECT EXAMINATION

20 BY MS. HOFFMAN:

21 Q. Good morning, Mr. Kennedy.

22 A. Good morning.

23 Q. So I'm going to show you a document here. So this has  
24 previously been marked Defendant's Exhibit C.

25 A. Yes.

*Kennedy - Direct/Hoffman*

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1 Q. Are you able to make out what this document is, exhibit?

2 A. I believe it's payroll.

3 Q. Okay. And are you able to see — I mean when you say  
4 payroll, do you — do you know what company?

5 A. No.

6 Q. Okay. Do you recognize the name of the individual that's  
7 under employee name there at the top?

8 A. Terrance? Where? Employee name.

9 Q. Employee name.

10 A. Yeah, Terrance.

11 Q. All right. Do you recognize that name?

12 A. Yes.

13 Q. Okay. And who is that?

14 A. I know Terrance as a skilled laborer through DSK.

15 Q. All right. So if I represented to you that your attorney  
16 produced this document in discovery as a DSK payroll or paystub  
17 for Terrance Myers (phonetic), would that — would you concede  
18 that that's correct?

19 A. Yes.

20 Q. And so here where it has the hourly rate, you see where I'm  
21 pointing?

22 A. Yes.

23 Q. What was Terrance's hourly rate?

24 A. That reads 12.50.

25 Q. Okay. Thank you. And this person, Terrance Myers, he

*Kennedy - Direct/Hoffman*

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1 worked on the project that DSK did for Ms. Berrian; is that  
2 correct?

3 A. Yes, along with others.

4 Q. But you're saying, yes, that is correct; is that true?

5 A. Yes, that is correct.

6 Q. All right. When Ms. — and you've been here, you've heard  
7 the testimony of Ms. Berrian and the questions of your counsel  
8 and me regarding the emails that were exchanged in the middle of  
9 April with Ms. Berrian's request for a refund of most of her  
10 money and your response, did you ever refund her any of her  
11 money?

12 A. The last correspondence I had with her was that she was  
13 going to contact her lawyer and then I didn't hear anything.

14 Q. You did not refund her money, correct?

15 A. That is correct.

16 Q. Okay. And you are aware that there was a judgment entered  
17 against DSK Property Services in the amount of \$50,000?

18 A. Yes.

19 Q. And did DSK Property Services ever pay that judgment in  
20 whole or part?

21 A. I believe that was a default judgment and the company was  
22 out of business.

23 Q. So the company did not pay that judgment?

24 A. That's correct.

25 Q. Okay. Now I know we've looked at this contract a few times

*Kennedy - Direct/Hoffman*

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1 already, but I will ask you to say do you recognize what this  
2 is?

3 A. Yes.

4 Q. And what is it?

5 A. It is a contract from DSK Property Services to Nancy  
6 Berrian.

7 Q. I'm going to draw your attention to the last page, showing  
8 the signature there, and whose signature is that?

9 A. Nancy Berrian's.

10 Q. And did you yourself sign this contract?

11 A. No, I did not.

12 Q. Did anyone from DSK sign this contract?

13 A. No, they did not.

14 Q. Was that your practice as owner of DSK or anyone at DSK not  
15 to sign contracts that the company entered into?

16 A. I — yeah, mo- — I don't think I ever signed a contract.  
17 Maybe mostly I signed — no, I apologize. I mostly never signed  
18 the contracts.

19 Q. And why was that?

20 A. The contract wasn't with me, it was with DSK.

21 Q. Right. But why did no one from DSK sign on behalf of the  
22 company?

23 A. There wasn't any reason to.

24 Q. When did DSK dissolve?

25 A. December '23.

*Kennedy - Direct/Hoffman*

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1 Q. December of 2023?

2 A. Yes.

3 Q. Are you familiar with the requirements of the dissolution of  
4 an LLC?

5 A. The requirements that I know of, yes.

6 Q. Okay. And what are those?

7 A. I actually would have to ask, because I had help with them.

8 MR. LAPUTKA: Your Honor, I'm going to object to this  
9 line of questioning. I don't know how it's relevant that two  
10 years later the company was dissolved or, specifically, that  
11 it's relevant that my client knows the legal way to dissolve an  
12 LLC.

13 MS. HOFFMAN: Your Honor, it goes to whether he was –  
14 what was his intent in the process, in dealing with my client  
15 specifically but in general with clients of DSK that he promised  
16 to do work for.

17 THE COURT: I think you can get there, but I think  
18 that you need to lay a foundation with respect to that ultimate  
19 question. We haven't heard anything about debts in general of  
20 DSK and I think that's where you're going, so I would ask you to  
21 lay a foundation before you ask him about what he did or didn't  
22 know about what he needed to do.

23 MS. HOFFMAN: Understood. Thank you.

24 BY MS. HOFFMAN:

25 Q. So, to your knowledge, when – at the time that DSK dissolved

*Kennedy - Direct/Hoffman*

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1 in December, were there outstanding debts that the company had?

2 A. Yes, a - yes.

3 Q. Okay. Did the debt that Ms. Berrian had with the company,  
4 was that included in those?

5 A. The refund of the \$1500 would have been considered.

6 Q. Okay. So if I represented to you as a matter of public  
7 record that the arbitration award of the default judgment was  
8 November 20th, 2023, in which Ms. Berrian was awarded \$50,000  
9 against DSK, would that not have been considered a debt that the  
10 company had at that point?

11 MR. LAPUTKA: Your Honor, I'm going to object. That  
12 calls for my client's legal conclusion. He already stated that  
13 he thought the debt was 1500 bucks.

14 THE COURT: I certainly think that she can ask whether  
15 he was aware of the arbitration having been entered prior to  
16 dissolution, so I'm going to allow that.

17 THE WITNESS: I apologize. I don't know what the  
18 question -

19 THE COURT: Why don't you ask the question again.

20 BY MR. LAPUTKA:

21 Q. Were you - were you aware that there was an award made  
22 against - a judgment against DSK of \$50,000 on November 20th,  
23 2023 in the matter of my client?

24 A. Yes, but I don't think I knew that until after DSK was  
25 closed.

*Kennedy - Direct/Hoffman*

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1 Q. Okay. Were you – did you not receive communications from  
2 the court on behalf of DSK during that time?

3 A. The communications would have been through the mail.

4 Q. Right, but did you receive them?

5 A. I did.

6 Q. So you were aware?

7 A. At some point, yes.

8 Q. Okay. So given that there was a judgment that was issued  
9 before December of 2023, I don't – I recognize there are delays  
10 in – in the mail, but at the time that DSK dissolved, there was  
11 a judgment or there was a debt made by – owed to my client,  
12 correct, whether or not you were aware of it?

13 A. Yes.

14 Q. Okay. So at the time then in December that DSK did  
15 dissolve, did you take the appropriate steps to notify  
16 creditors, as you were required to in the dissolution of an LLC?

17 MR. LAPUTKA: Your Honor, I'm going to object to the  
18 question because my client was already asked if he knew what  
19 dissolving a corporation entails. I don't think that he  
20 understands any of this and I also don't know how it's relevant  
21 whether DSK was dissolved or not. I would represent to the  
22 Court it's not dissolved.

23 THE COURT: I do think that the question of whether or  
24 not – specifically whether notice went out, I think is an  
25 appropriate question. Whether he had knowledge of what he had

*Kennedy - Direct/Hoffman*

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1 to do to dissolve the company, I understand, but I don't think  
2 he's being asked that. I think he's being asked a very direct  
3 question about one of the steps, so I'm going to allow you to  
4 ask that question.

5 BY MR. LAPUTKA:

6 Q. So, Mr. Kennedy, were you aware –

7 THE COURT: Ask it again.

8 MR. LAPUTKA: Thank you.

9 BY MR. LAPUTKA:

10 Q. – were you aware that you had an obligation as the sole  
11 owner of this LLC to notify creditors that the LLC was being  
12 dissolved?

13 A. No.

14 Q. Okay. And you were the sole owner, correct?

15 A. Yes.

16 Q. So apart from lawsuits against DSK, have you yourself ever  
17 been involved in any lawsuits personally? Have you ever been  
18 sued personally other than this matter?

19 A. I don't believe so.

20 MS. HOFFMAN: So again the procedure of introducing  
21 rebuttal exhibits, they were previously emailed to the Court.  
22 It's my understanding –

23 THE COURT: Okay.

24 MS. HOFFMAN: – that they would then be shown to –

25 THE COURT: Yes. You can just show them to Mr.

*Kennedy - Direct/Hoffman*

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1 Laputka.

2 MS. HOFFMAN: Okay.

3 THE COURT: And we'll take it from there.

4 MS. HOFFMAN: Okay. All right. So this has been  
5 previously marked as P-13.

6 MR. LAPUTKA: When were these submitted to the Court?  
7 And what are these rebutting?

8 MS. HOFFMAN: His statement that he doesn't believe  
9 he's ever been sued personally.

10 MR. LAPUTKA: Your Honor, I just don't see the  
11 relevance. We're here on a 523(a)(2) claim about whether this  
12 debt was fraudulently induced. What does the relevance of a  
13 lawsuit from 20 years ago have to -

14 MS. HOFFMAN: Oh, it's evidence.

15 MR. LAPUTKA: Oh, it has an 04 case number - oh,  
16 sorry, it's a 22 case number.

17 MS. HOFFMAN: Your Honor, the relevance is that part  
18 of the - what we need to prove in this case is intent and it's  
19 the state of mind of the Defendant and the credibility of the  
20 Defendant specifically in this question is relevant to that  
21 issue.

22 THE COURT: All right. I'll allow it.

23 MR. LAPUTKA: But, Your Honor, first we have to prove  
24 that my client owes this debt. They have not even shown  
25 anything that would cause my client to have this debt owed

*Kennedy - Direct/Hoffman*

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1 personally. We're jumping way ahead here.

2 THE COURT: I do think that it's relevant to  
3 credibility.

4 MR. LAPUTKA: Okay.

5 THE COURT: So on that basis, I will allow it.

6 BY MS. HOFFMAN:

7 Q. So, Mr. Kennedy, I will again show what's previously marked  
8 as P-13.

9 A. Oh, I love this.

10 Q. So you do – do you recognize the document?

11 A. I recognize this document and I recognize that judge. And  
12 that judge forgot I was even there.

13 Q. Okay. Well, that's interesting, but what is this document?

14 A. So this document is from Carla Jenkins (phonetic). This is  
15 a lady that I was redoing a back patio for. And she did not  
16 like something and asked me not to come back. And then she  
17 didn't pay me this money but asked me for it.

18 Q. Okay. So is this a docket of a lawsuit that was filed  
19 against you personally?

20 A. It – I have – yes, but I have a hard time even recognizing  
21 this. When I called the courthouse, if I didn't have a lawyer,  
22 they would not even have remembered that I was there.

23 Q. Okay. I'm not sure what you're trying to say by that, but –

24 A. This –

25 Q. No, no, it's okay.

*Kennedy - Direct/Hoffman*

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1 A. Okay.

2 Q. All right. So -

3 A. I'll ask -

4 Q. - so this is - this is then a record that there was at least  
5 one lawsuit against you personally, in contradiction to what you  
6 just said, correct?

7 Yes or no.

8 A. It should not have been.

9 Q. Sir, is it - is it a record of a lawsuit -

10 A. My name is on there, yes.

11 Q. - filed against you?

12 A. No. It was filed - it should have been filed against the  
13 company. It was grossly taken care of and that's how my name  
14 got on there.

15 Q. Okay. And what about this document here which appears to be  
16 a lawsuit filed by Fitzpatrick, Lentz & Bubba against yourself  
17 as well as DSK; do you recognize that matter?

18 A. I recognize Fitzpatrick, Lentz & Bubba. I also recognize  
19 that they were the counsel for DSK Property Services and that my  
20 name was added to it.

21 Q. But this is a lawsuit against you personally by Fitzpatrick,  
22 Lentz & Bubba, correct?

23 A. See, I - I - I don't - I mean I don't know everything. I'm  
24 not going to say I do. But I see that as Fitzpatrick, Lentz &  
25 Bubba trying to sue two separate entities, so it would be like

*Kennedy - Direct/Hoffman*

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1 two separate people.

2 Q. And one of those people is you, correct?

3 A. One of those people is me, yeah.

4 Q. So why did you say that you did not remember, given that  
5 this is in 2023, why did you say you didn't - you had never been  
6 a party to any lawsuit personally?

7 A. Never - I never considered it.

8 Q. You didn't consider this a lawsuit?

9 A. No. No. This was over work that was never done. I asked  
10 them for direct receipts of what it was that they did. They  
11 could not produce them on any way, shape, or form. And then I  
12 personally went through bankruptcy, the company went out of  
13 business. I don't know what to do. No, I never - I - this - I  
14 apologize.

15 Q. Okay. And, just to clarify, Fitzpatrick, Lentz & Bubba were  
16 your prior attorneys?

17 A. They were. And I did - I - yeah.

18 MS. HOFFMAN: Okay. And one more. This was  
19 previously marked as Exhibit P-14, another rebuttal exhibit.

20 MR. LAPUTKA: No objection, Your Honor.

21 THE COURT: Okay.

22 BY MS. HOFFMAN:

23 Q. All right. So, Mr. Kennedy, I'm going to show you what's  
24 been previously marked as Exhibit P-14. Do you recognize - what  
25 is this here?

*Kennedy - Direct/Hoffman*

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1 A. Yeah, I do.

2 Q. What is it?

3 A. It says KP Investments, LLC, plaintiff, versus Mark L.  
4 Kennedy, individual – individually and trading as DSK Property  
5 Services and DSK Property Services, LLC.

6 Q. Thank you. And so do you know what this document  
7 represents?

8 A. This document represents the lawsuit that came against my  
9 company from a client that during Covid said that I wasn't  
10 producing fast enough.

11 Q. Okay. And I know you say it's against your company, but you  
12 do see that it also says Mark Kennedy, individually, correct?

13 A. I – again, this was a contract that was through the company.  
14 I'm pretty sure – I don't know how they do it, I don't know –  
15 understand everything, but this – this lawsuit does not exist  
16 anymore. I don't know what to say.

17 Q. So on – I'm turning to this page, which is the verification,  
18 did you sign this verification?

19 A. (Perusing document.) These don't go together.

20 Q. Sir, –

21 A. These – they don't, no, they don't. Yeah, I can see. This  
22 is one of the reasons why I didn't work with Lentz & Bubba ever  
23 again. This is from Lentz & Bubba, and you're putting it as DSK  
24 Property Services versus KP Investments, and that's not true.

25 Q. Sir, – okay, let's go back. So you see here on the first

*Kennedy - Direct/Hoffman*

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1 page, which is specifically the first page of this filing,  
2 right?

3 A. Yes.

4 Q. So you see at the top where it's got the court's stamp and  
5 it's got the docket number there, 2021C2265 -

6 A. Yes, I do.

7 Q. Okay. And then turning to the verification page, do you see  
8 that that's the same docket number 2021C2265?

9 A. Why wouldn't that be there? That wouldn't be there -

10 Q. Sir, -

11 A. - because Lentz & Bubba was my lawyer at that time, during  
12 this; why wouldn't that be there?

13 Q. Maybe I misunderstood your last response. I thought you  
14 were saying that this verification didn't go with the filing and  
15 it shouldn't have been there.

16 A. It should have been with Lentz & Bubba because that's what I  
17 signed, not with the - not with KP Investments.

18 MR. LAPUTKA: Your Honor, again I'm going to object to  
19 the relevancy. I think we're lost in the weeds here. She's  
20 asking of a verification that was attached to a response was  
21 signed by Mr. Kennedy, and we're not even talking about that  
22 anymore. We're talking - I'm confused as to how this is  
23 relevant.

24 MS. HOFFMAN: Well, we should be talking about it,  
25 but -

*Kennedy - Direct/Hoffman*

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1 MR. LAPUTKA: I mean you're offering this for the  
2 credibility of my client stating that he's never been involved  
3 in a lawsuit. What does this have to do with that?

4 MS. HOFFMAN: This shows that he was involved in a  
5 personal lawsuit and he knew about it because he signed the  
6 verification, although he's claiming that he -

7 MR. LAPUTKA: Your Honor, we've done this - this is  
8 the third one and the fourth one now. Clearly his response  
9 every time is that he believes that these are company debts and,  
10 yeah, maybe he's on it as well. I don't know that we need to  
11 continue down this path.

12 THE COURT: Okay. I am - I'm going to say that with  
13 regard to this issue, I think that we've already - it's been  
14 asked and answered now three times. I understand that more than  
15 once makes sense for your argument, but I'm going to leave it  
16 there. I don't think that we need to go down any further this  
17 line of questioning.

18 MS. HOFFMAN: Understood, Your Honor. And so the only  
19 other question I had in regards to this document for Mr.  
20 Kennedy:

21 BY MS. HOFFMAN:

22 Q. Are you able to see this page of your answer or the answer  
23 that was filed by you and your company?

24 A. Am I able to see it? Yes.

25 Q. Okay. And is it correct to say that there was an account of

*Kennedy - Cross/Laputka*

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1 fraud that you responded to in this lawsuit?

2 A. The company terminated me, so it -

3 Q. Sir, please -

4 A. - shows the same as this was -

5 Q. - please answer the question.

6 A. Yes.

7 MS. HOFFMAN: Okay. Thank you.

8 Your Honor, that's all the questions I have for Mr.  
9 Kennedy.

10 THE COURT: Okay. Mr. Laputka.

11 CROSS-EXAMINATION

12 BY MR. LAPUTKA:

13 Q. Mr. Kennedy, how long was your company open and operating?

14 A. Six, seven years.

15 Q. In that seven-year period, how many jobs did you do?

16 A. A lot.

17 Q. Could you -

18 A. I - I couldn't - a lot. If I was to say a number, I  
19 couldn't. Some were big, some were small.

20 Q. I'm not asking about the size of the jobs or the dollar  
21 amount. I'm asking how many jobs a year did you do for seven  
22 years?

23 A. Oh, probably a hundred a year.

24 Q. Okay. So -

25 A. A lot.

*Kennedy - Cross/Laputka*

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1 Q. And in doing 700 jobs over seven years, it was just  
2 represented that there were three, and this being the fourth,  
3 lawsuit against you or the company with relation to your work  
4 product or DSK's work product; is that correct?

5 A. Correct.

6 MS. HOFFMAN: Objection.

7 THE COURT: What — I'm going to ask you not to answer  
8 until I deal with the objection.

9 THE WITNESS: Sorry.

10 THE COURT: That's okay.

11 What was —

12 MS. HOFFMAN: The objection —

13 THE COURT: — the objection?

14 MS. HOFFMAN: There has been no claim that these were  
15 the only lawsuits filed in that time period.

16 MR. LAPUTKA: That's fine, Your Honor.

17 THE COURT: Okay.

18 BY MR. LAPUTKA:

19 Q. When you stated earlier that you didn't think you had been  
20 sued, were you referring to the fact that these lawsuits all  
21 pertain to the company?

22 A. Yes.

23 Q. But there is a distinction that you now realize, that in  
24 some of these suits or in all of the ones you were shown, that  
25 you were also personally named?

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1 A. Yes.

2 MR. LAPUTKA: Okay. I have no further questions in  
3 the plaintiff's case in chief, Your Honor.

4 THE COURT: Ms. Hoffman, do you have any redirect?

5 MS. HOFFMAN: No, Your Honor.

6 THE COURT: Okay. You can step down, Mr. Kennedy.

7 THE WITNESS: Thank you.

8 THE COURT: Um-hum.

9 (Witness excused.)

10 THE COURT: Okay. We're over here.

11 MS. HOFFMAN: With the submission of — I'm just going  
12 through which exhibits it was exactly — okay, with the  
13 submission of the Exhibits P-1 and then P-3 through P-7, as well  
14 as I believe — I don't know if it's appropriate to offer the  
15 exhibits I referred to from the defense.

16 MR. LAPUTKA: I mean I think we went through all of  
17 those —

18 MS. HOFFMAN: Yeah. So —

19 THE COURT: Yeah. I think that that's fine, —

20 MS. HOFFMAN: — exhibits —

21 THE COURT: — I think they were going to offer them,  
22 so.

23 MS. HOFFMAN: — introduce — sure. And I shall say  
24 P-10 through 14, I believe it was, the rebuttal. One moment  
25 there, Your Honor.

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1 THE COURT: 10 I think is a deposition transcript.

2 MS. HOFFMAN: Okay. So P-...

3 THE COURT: I think. You didn't say, so it -

4 MR. LAPUTKA: Your Honor, I would object to the  
5 admission of any exhibits that we didn't use.

6 MS. HOFFMAN: No, I understand.

7 MR. LAPUTKA: Okay.

8 MS. HOFFMAN: Yeah, so I'm just trying to figure out -

9 THE COURT: Yeah. I think we -

10 MS. HOFFMAN: So I think it was P- - P-12, 13, and 14.  
11 I think those were the three.

12 THE COURT: 12, I think is the - that I did not see.  
13 That's the LLC -

14 MS. HOFFMAN: Oh, I'm sorry, Your Honor.

15 THE COURT: That's okay.

16 MS. HOFFMAN: So 13 and 14 in addition to the ones I  
17 already mentioned.

18 THE COURT: Yes, 13 and 14, okay.

19 MS. HOFFMAN: And, with that, we would rest.

20 THE COURT: Are there objections to P-1, P-3 through  
21 7, or P-13 and 14?

22 MR. LAPUTKA: No, Your Honor.

23 THE COURT: Okay. Then I presume you're not objecting  
24 to your own exhibits, A through D?

25 MR. LAPUTKA: Correct, Your Honor.

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1 THE COURT: All right. So they'll be admitted.

2 (Plaintiff's Exhibits 1, 3 through 7, and 13 and 14, and  
3 Defendant's Exhibits A through D received in evidence.)

4 THE COURT: Okay. All right. Mr. Laputka.

5 MR. LAPUTKA: Your Honor, at this point, pursuant to  
6 Federal Rule of Civil Procedure 52©, I would like to make a  
7 motion for – I'm trying to think of what it's called, it is  
8 partial – partial judgment – judgment on partial findings.  
9 That's what it is. 52© is judgment on partial findings.

10 The reason I would seek judgment on partial findings,  
11 in advancement of my motion, is the fact that we are here today  
12 for a fraud claim against my client personally. I would argue  
13 that at this point there has been no evidence put before the  
14 Court that my client had any personal debt owed to the  
15 plaintiff, number one. Number two, there's also been no –  
16 nothing to prove fraud on behalf of my client.

17 There's been no discussions about piercing the  
18 corporate veil, there's been nothing that shows that he  
19 mismanaged the money. In fact, the only evidence before the  
20 Court is that there was a contract signed, my client showed up  
21 or had his employees show up, did some work, some paystubs that  
22 he paid to employees, some testimony that some of the work was  
23 done. And then what appears happened, by her own emails, was  
24 that Ms. Berrian decided to go in a different direction.

25 What I would surmise from the testimony this morning,

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1 if you look at the evidence presented, there was an extensive  
2 remodel to make this house substantially different, modern,  
3 newer, nicer, whatever. And then allegedly a friend or somebody  
4 counseled her that there were all these problems with the home.  
5 So she decided that she wanted to take the x amount of dollars  
6 that she was going to do on a remodel and do it on repairs of  
7 the systems of the home.

8           There was no fraud in the inducement of this debt,  
9 which is required to be proven by the plaintiff whatsoever. My  
10 client was referred to her by people who he did a good job for,  
11 at least at the beginning that's what she thought.

12           He testified that he did a hundred jobs a year for  
13 seven years. And, yes, a couple of lawsuits along the way. I  
14 would argue that that's the cost of doing business. You can't  
15 make a hundred percent of the people happy a hundred percent of  
16 the time.

17           But by her own admission, she signed the contract with  
18 the company. He started work. A month later she decided she  
19 was going in a different direction. And by that in the  
20 documents, it was changing the scope from making the house  
21 pretty to making the house safe, because she only had x amount  
22 of dollars. That is not my client's problem. That is not  
23 fraud.

24           If you take a look at the exhibit that we presented  
25 with the options, it has a breakdown of exactly why my client

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1 kept the money. My client pulled guys off other jobs, as it  
2 states right in the exhibit that was offered into evidence by  
3 the Plaintiff – on my behalf, obviously. But he was there  
4 ready, willing, and able, and she chose to do something else.  
5 You can't unilaterally break a valid contract.

6 She asked for change orders. Through her own  
7 testimony, my client offered change orders and said, yeah, sure,  
8 we can do all that stuff. Here's how much it costs. And then  
9 she went, whoa, that's too much. It has nothing to do with DSK  
10 Properties, LLC.

11 And further than that, it has absolutely nothing to do  
12 with my client. On my client's petition, as filed with this  
13 Court, he had this entire matter listed as disputed, the debt  
14 being disputed. At no point does he recognize this is a valid  
15 debt, other than possibly saying, sure, I'll give you the 1400  
16 bucks back because here is all the work I did and the result of  
17 a net 1400 to you, to which the Plaintiff did not accept. She  
18 didn't even respond, by her own testimony.

19 So, Your Honor, at this point I think we have to have  
20 judgment in my favor, not only judgment in my client's favor for  
21 the Plaintiff's failure to make out a case and to prove her  
22 case, but also under 523, my client's entitled to attorney's  
23 fees for this harassment. My attorney's fees should be paid and  
24 all of the Defendant's costs in defending this adversary  
25 proceeding should be born by the Plaintiff.

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1 Thank you, Your Honor.

2 THE COURT: Ms. Hoffman.

3 MS. HOFFMAN: Yes, Your Honor. Thank you.

4 Your Honor, obviously we would oppose that. We  
5 believe that Ms. Berrian has proven by clear and convincing  
6 evidence that the debt, existing debt, yes, was incurred by  
7 fraud. And I can go through a detailed reiteration of the  
8 testimony that we've heard so far today, but to sum it up, Mr.  
9 Kennedy made these representations to Mr. Berrian – Ms. Berrian  
10 that he would complete the work agreed upon. And he has not  
11 presented or does not appear to be going to present any  
12 witnesses other than himself to corroborate his claims of  
13 expenditures on time or materials.

14 He made those representations to her with recklessness  
15 as to their truth or falsity. He clearly had a reckless  
16 disregard in that – making that area. He didn't even bother to  
17 apply for permits. He covered the windows so the work could not  
18 be seen. He, in fact, told Ms. Berrian he was not going to be  
19 applying for permits. He did not sign the contract. He said he  
20 honestly never signed contracts, you know, which is a violation  
21 of HICA for a valid contract.

22 As the owner of DSK, he did not advise her as a  
23 creditor of her rights to file a claim. He has previously been  
24 sued for fraud personally and then proceeded today to lie about  
25 that under oath.

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1           And, as far as the inducement, if he had not made  
2     those representations, she never would have entered into the  
3     contract with him. She relied on those representations and her  
4     damages are \$44,172.50. She – he then of course refused to  
5     return the money, as he said, despite having completed a mere  
6     five hours of work, as he testified, as the worker that Ms.  
7     Berrian testified was there, Terrance Myers, and again no  
8     evidence was presented to show that there were other workers at  
9     the property. And Ms. Berrian testified that there were no  
10    others, he was making \$12.50 an hour. If he was there for five  
11    hours, the quantum meruit here is – is not anywhere near what  
12    the Defendant is claiming.

13           He – in his response to Ms. Berrian where he says that  
14    he would refund 1,400 or 1,500, is absurd. He put out – we all  
15    saw the photos of the sum total of what was done on her house.  
16    So, yes, obviously we're disputing that there was not a debt.  
17    We believe he did incur a debt personally.

18           And just to note on the piercing of the corporate  
19    veil, Mr. Kennedy did raise preliminary objections to that in  
20    the Common Pleas matter on the same issue, and those were  
21    overruled and allowed to proceed. Of course then he – that  
22    matter was stayed because of this instant proceeding.

23           So I would argue also res judicata just that that has  
24    been allowed to proceed by another court and that if the Court  
25    wanted to order supplemental briefing on that matter, we could

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1 do that, but that should not prevent the Court from finding  
2 against Mr. Kennedy personally.

3 And he testified repeatedly that he is not aware of  
4 the requirements of an LLC despite forming one. He is not aware  
5 of what has to be done in dissolution. He didn't notify my  
6 client that she was a creditor even though that judgment was  
7 entered before the supposedly dissolution, although I know that  
8 counsel disputes that it was even the result.

9 So there is just a pattern here of playing fast and  
10 loose with his obligations. And, again, fraud of course is a  
11 high burden; and the intent, his – of course you're very  
12 unlikely to have somebody say, yes, I intended to commit fraud.  
13 So it has to be inferred from his actions and previous other  
14 cases and in this case in his dealing with Ms. Berrian, he had a  
15 pattern here of continually promising her that he was going to  
16 do work by a certain time and then not following through. And  
17 then having her continue to pay him money when he would make  
18 more promises again, and again failing to follow through. So  
19 it's no wonder she eventually got sick of it and didn't trust  
20 him to do the additional work that he was quoting her for, much  
21 less what she had already contracted for.

22 So therefore, Your Honor, that we would definitely  
23 oppose this motion by Defendant.

24 THE COURT: Well, let me ask you this. Tell me what  
25 the basis is for the debt against Mr. Kennedy as opposed to DSK?

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1 Because I'm not sure that I heard that from the testimony that's  
2 been provided so far.

3 MS. HOFFMAN: Understood. Understood, Your Honor.

4 THE COURT: So tell me what your theory of liability  
5 is here, because I'm not quite sure that it's been met. If it's  
6 piercing the corporate veil, I didn't hear anything that would  
7 lead me to believe that that happened. Unless there's some  
8 other theory that you're relying on, tell me why I should find  
9 that there is a debt against him personally.

10 MS. HOFFMAN: Well, Your Honor, DSK was an LLC but it  
11 was, as I said, Mr. Kennedy was the sole owner. He was not  
12 complying with the requirements of an LLC. He has said  
13 variously that it's been closed down, that it's being dissolved.

14 THE COURT: But what specifically was he not complying  
15 with when they entered into the contract, which I think is where  
16 you need to go in terms of piercing the corporate veil?

17 MS. HOFFMAN: So at that time he, again, did not – no  
18 one from DSK signed the contract. He personally represented to  
19 Ms. Kennedy – to Ms. Berrian repeatedly that work would be done.  
20 You know, no one else – there was no one else from DSK  
21 representing this to her. It was all Mark Kennedy. And it's  
22 inextricable, his actions, his promises, his history, it's  
23 impossible to extract that from DSK, because even though  
24 formally it was an LLC, he's again presented – not that it's he  
25 hasn't had the opportunity, but in discovery, as I say, he has

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1 not presented any evidence of what DSK did to actually follow  
2 through on Ms. Berrian's work request. So the payments that she  
3 made, expenditures, any work that was done specifically on her  
4 house has not been presented at any point and by the Defendant.  
5 So she — you know, it's impossible to say that he is not liable  
6 because DSK was basically a formality at this point. He was the  
7 one making these promises, inducing her to pay money, and DSK  
8 itself was just a legal fiction.

9 THE COURT: All right.

10 MR. LAPUTKA: Your Honor, I don't believe there was —

11 THE COURT: This is what I want to do —

12 MR. LAPUTKA: — any evidence or testimony —

13 THE COURT: Hold on.

14 MR. LAPUTKA: — of any of that.

15 THE COURT: This is what I want to do. I'm going to  
16 reserve my decision on that motion because I'm going to give the  
17 parties the opportunity to brief the issue of participation  
18 theory or piercing the corporate veil.

19 At this point, I don't think that I have enough in  
20 front of me to make a decision on your motion.

21 I'd like to give you both an opportunity to at least  
22 brief those — those two issues so that I can make an informed  
23 decision about what has been presented and whether or not it  
24 meets those — those burdens.

25 So since I am going to reserve on that, I am however

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1 going to allow you to present whatever evidence you would like  
2 to with the understanding that we can either do that today or we  
3 can wait until after briefing and have you come back, but I'd  
4 prefer that you not have to do that.

5 MR. LAPUTKA: Can I confer with my client for a  
6 minute, Your Honor?

7 THE COURT: Yes.

8 MR. LAPUTKA: Because I believe it's a little bit  
9 detrimental if I move forward –

10 THE COURT: Right, –

11 MR. LAPUTKA: – without a hearing on this motion but  
12 also none of us want to come back, so –

13 THE COURT: Understood.

14 MR. LAPUTKA: – can we confer for a minute?

15 THE COURT: Absolutely.

16 MR. LAPUTKA: Thank you, Your Honor.

17 THE COURT: All right. We'll go off the record.

18 (Recess taken from 11:47 a.m. to 12:06 p.m.)

19 THE CLERK: All rise. Court is now in session.

20 THE COURT: Okay.

21 MR. LAPUTKA: Thank you, Your Honor.

22 THE COURT: Tell me what we've come up with.

23 MR. LAPUTKA: After a discussion with my client, we  
24 would like Your Honor to rule on the motion before we do our  
25 case in chief. And, as reluctant as we are to come back another

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1 day, hopefully that won't be necessary.

2 THE COURT: Understood.

3 MR. LAPUTKA: Thank you.

4 THE COURT: Okay. So if I – well, let's put it this  
5 way. Do you want to have responsive time or did you both want  
6 to brief at the same time? Like do you want me to set this up  
7 so that the Plaintiff files her brief and then you get time  
8 after that to come in or do you want to do it at the same time?  
9 I'm just trying to figure out time.

10 MR. LAPUTKA: I would like some time after but not  
11 much.

12 THE COURT: Got it. Okay. All right.

13 So, Ms. Hoffman, 30 days?

14 MS. HOFFMAN: Thirty days would be fine, Your Honor.

15 THE COURT: Okay. And then?

16 MR. LAPUTKA: Forty-five? Not from then, from now.

17 THE COURT: Yeah, got it. Okay.

18 I will put that on the docket and we'll go from there.  
19 Once I make that decision, I think it becomes sort of either an  
20 all or nothing proposition at that point. So once I have them,  
21 hopefully I will make that decision pretty quickly and we can  
22 decide where we go.

23 MR. LAPUTKA: Okay.

24 THE COURT: All right. Thank you, all.

25 MR. LAPUTKA: Thank you, Your Honor.

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1 MS. HOFFMAN: Thank you, Your Honor.

2 THE CLERK: Okay. That concludes the list for today.

3 THE COURT: All right. We can go off the record.

4 (Trial was adjourned at 12:07 o'clock p.m.)

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State of California               )  
County of Stanislaus          )     SS.

I, Susan Palmer, certify that the foregoing is a true and correct transcript, to the best of my ability, of the above pages, of the digital recording provided to me by the United States Bankruptcy Court, Eastern District of Pennsylvania, Clerk of the Court, of the proceedings taken on the date and time previously stated in the above matter.

I further certify that I am not a party to nor in any way interested in the outcome of this matter.

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